



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal York Capital Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC, RP

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenants under the Residential Tenancy Act (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice);
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement; and
- An order for the Landlord to complete repairs.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the respondent, who is an agent for Landlord (the Agent), who provided affirmed testimony. The Tenants did not attend. The Agent attended the hearing at the scheduled time, ready to proceed, and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agent stated that they were never served with a copy of the Notice of Dispute Resolution Proceeding, which contains the Application and the Notice of Hearing, by the Tenants as required, but were aware that the Tenants planned to dispute the 10 Day Notice as the Tenants had advised them of such. As a result, the Landlord stated that they themselves obtained a copy of the Notice of Dispute Resolution Proceeding, including a copy of the Application and the Notice of Hearing, from the Residential Tenancy Branch (the Branch) when the Tenants did not provide it to them. Despite the

Tenants' lack of service of the Notice of Dispute Resolution Proceeding on them, the Agent stated that they wished to proceed with the hearing as scheduled as they wished to obtain an Order of Possession for the rental unit based on the 10 Day Notice disputed by the Tenants.

Although section 59(3) of the Act states that except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director, section 71(2)(b) and (c) of the Act allow me to find that a document has been sufficiently served for the purposes of this Act on a date the I specify and that a document not served in accordance with section 88 or 89 is none the less sufficiently given or served for purposes of this Act.

As the Agent obtained a copy of the Notice of Dispute Resolution Proceeding from the Branch, including a copy of the Application and the Notice of Hearing, and wished to proceed with the hearing as scheduled, I therefore find that the above noted documents were sufficiently given to the Landlord or the Agent for the purposes of the Act, and the hearing therefore proceeded as scheduled, despite the absence of the Tenants or an agent acting on their behalf, pursuant to rule 7.3 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure).

Although I have reviewed all evidence and testimony before me that was accepted for consideration by me in accordance with the requirements of the Rules of procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided during the hearing.

#### Preliminary Matter

The Agent stated that they have been improperly named as the Landlord in the Application when the Landlord is a corporation. The Agent provided me with the correct legal name for the Landlord, which matches the name for the Landlord listed on the 10 Day Notice provided for my review and consideration by the Tenants. I have therefore amended the application to correctly name the Landlord and to reflect that the respondent named is in fact an agent for the Landlord.

Background, Evidence, and Analysis

The Tenants did not appear at the hearing to provide any evidence or testimony in relation to the Application. Rule 6.6 of the Rules of Procedure states that the onus to prove their case is on the person making the claim. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. As the Tenants did not appear at the hearing of their own Application to present any documentary evidence or testimony for my consideration, I therefore dismiss their Application in its entirety, without leave to reapply. Having made this finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession for the rental unit pursuant to section 55 of the Act.

The 10 Day Notice in the documentary evidence before me, submitted by the Tenants for my consideration, is in writing in the approved form, contains the address for the rental unit, and is signed and dated November 4, 2020. The 10 Day Notice has an effective vacancy date of November 14, 2020, and indicates that as of November 1, 2020, the Tenants owed \$974.70 in outstanding rent. The Agent testified that the 10 Day Notice was posted to the door of the rental unit on November 4, 2020, and as the Tenants filed their Application seeking to dispute the 10 Day Notice on November 6, 2020, I find that they received the Notice on or before November 6, 2020.

Based on the above, I am satisfied that the 10 Day Notice complies with section 52 of the Act and I find that the corrected effective date of the 10 Day Notice is November 16, 2020, pursuant to section 53 of the Act. Although the Tenants disputed the 10 day Notice within the timelines set out in 46(4)(b) of the Act, they did not attend the hearing to provide any evidence or testimony for my consideration. At the hearing the Agent stated that rent in the amount of \$974.70 was due on November 1, 2020, for the month of November 2020, and that the Tenants did not pay this rent until December 2, 2020, well past the deadline set out in section 46(4)(a) of the Act.

Based on the Agent's undisputed and affirmed testimony, I am satisfied that rent in the amount of \$974.70 was due for November 2020, on November 1, 2020, and that the Tenants did not pay this overdue rent within 5 days of receiving the 10 Day Notice, which I have already found above was received by them on or before November 6, 2020. Based on the above, and as there is no documentary evidence or testimony before me that the Tenants had a right under the Act to deduct or withhold November 2020 rent, I find that the Landlord is therefore entitled to an Order of Possession for the rental unit pursuant to section 55(1) of the Act.

In the hearing the Landlord requested that the Order of Possession be effective at 1:00 P.M. on February 15, 2021, instead of two days after service, to give the Tenants some additional time to clean and vacate the rental unit. I have therefore granted the Order of Possession to the Landlord for this date and time and I Order the Tenants to vacate the rental unit by 1:00 P.M. (Pacific Time) on February 15, 2021.

### Conclusion

The Tenants' Application is dismissed in its entirety, without leave to reapply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **1:00 P.M. on February 15, 2021, after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from them by the Landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 29, 2021

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Residential Tenancy Branch